IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 169 OF 1994

1. Usha Vishwanath Umardand.
2. Jayant Vishwanath Umardand,
3. Rajesh Vishwanath Umardand,
4. Mahesh Vishwanath Umardand,
5. Sindhutai Dnyanu Umardand. ... Appellants. (Org.Plaintiffs)

Versus.

1. Ashok Namdeo Pawar,
2. Jayant Manjappa Uchil,
3. National Insurance Co.Ltd. Pune Division. ... Respondents. (Org.Defendants.)

Ms.Prachi Tatake holding for Shri R.A.Thorat for the Appellants.

Shri D.S.Sawant for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 12th and 13th February, 2007.

ORAL JUDGMENT.

1. Heard the learned Advocate for the Appellants and the Advocate for the 1st Respondent. The Appellants are the original Claimants in a claim petition filed under the provisions of the Motor Vehicles Act, 1988. One Vishwanath Umardand died in an accident involving a motor vehicle. The 1st Appellant is the widow of the deceased, 2nd to 4th Appellants are the children of the deceased and the 5th Respondent is the mother of the

deceased.

2. On 8th March 1989, the deceased was travelling from Pune to Satara by an Ambassador Car bearing No.MVL-250. He himself was driving the car. When he came to Mile Stone No.776/2 in Khambataki Ghat at about 10.20 a.m., a tanker bearing No.MTT-7560 came from the opposite direction in a very high speed. As the deceased was ascending, the speed of the car was very slow. The tanker was descending the Ghat and while doing so, the 1st Respondent who was driver of the tanker, lost control over the vehicle. The tanker came on the wrong side and gave a dash to the car. As a result, the deceased suffered several injuries and he died on the spot. At the time of the death, the age of the deceased was about 46 years and he was employed as a Civil Engineer in Irrigation Department of the Government of Maharashtra. He was holding a diploma in Civil Engineering and has put in service from 19th May 1963. The 2nd Respondent is the owner of the Tanker and the 3rd Respondent is the insurer of the Tanker. The claim was contested by the Respondents. The learned Member of the Tribunal held that the accident occurred on account of the rash and negligent driving by the 1st Respondent. The learned Member of the Tribunal awarded compensation of Rs.2,61,200/- to the Appellants together with proportionate costs along with interest at the rate

of 12% per annum from the date of filing of the claim petition till realisation. The said amount included the amount awarded on account of no fault liability.

3. There is no appeal or cross objection preferred by any of the Respondents and the Respondents have not otherwise challenged the finding recorded on the issue of negligence. Therefore, it is not necessary to go into the aspect of negligence and this Court will have to proceed on the footing that the finding recorded by the Tribunal on the issue of negligence is correct.

4. This Appeal is preferred by the original Claimants for enhancement in the compensation. The learned Advocate for the Appellants submitted that the multiplicand and multiplier taken by the Tribunal is on the lower side. It is submitted that there was a clear evidence on record as regards the income of the deceased at the time of his death as well as his future prospects of promotion. It is submitted that while calculating the income for the purpose of arriving at a multiplicand, a reasonable increase in the income on account of future prospects of promotion will have to be considered. The learned Advocate for the Appellant invited my attention to the panchanama which records that the loss caused to the car driven by the deceased was to the extent of Rs.10,000/-. She submitted that as

the multiplicand taken by the Tribunal is on the lower side the Appellants are entitled to an enhancement. It was submitted that even on account of damage to the car, the compensation ought to have been awarded. None appears for Respondent No.3 Insurance company. Shri Sawant appears for Respondent No.1 who has submitted that no interference is called for with the impugned Award.

5. I have considered the evidence on record. Apart from the 1st Respondent, the Appellants have examined Shri Shivaji Jadhav who was at the relevant time working in the Irrigation Department. He was sitting in the car next to the deceased. He described the manner in which the accident occurred. He stated that the front right portion of the car was completely pressed and the chasis was bent. One Vijay Kashinath More, a Junior Clerk serving in Dhom Irrigation Project was examined as a witness. He stated that he was working in the Establishment section. He brought the original service book of the deceased before the Court. The service book discloses that the date of birth of the deceased was 1st March 1943. It also discloses that the deceased joined the service on 19th May 1963 as an Overseer. He was promoted to the post of Junior Engineer on 1st October 1973 and with effect from 1st April 1989, he was promoted to the post of Sectional Engineer. The witness

stated that the deceased was required to go on tour and he was being paid a lumpsum amount of Rs.500/- per month as tour allowance. He deposed that in February 1989, the basic pay of the deceased was Rs.2750/- and in addition, the deceased was getting Rs.798/- as D.A. He proved the certificate at Exh.39 which disclosed the details of the income of the deceased. He stated that the deceased would have retired on 1st March 2001. He stated that the basic salary of the deceased would have been Rs.3435/- on the date of retirement assuming that the deceased was to continue on the post of Sectional Engineer till the date of retirement. He stated that the next promotion of the deceased was to the post of Deputy Engineer.

6. Thus at the time of death, the basic monthly salary of the deceased was Rs.2750/- and in addition to that he was getting Dearness Allowance of Rs.798/- p.m. Apart from Dearness Allowance, he was getting a lumpsum amount of Rs.500/-p.m as a tour allowance. After joining the service on 19th May 1963 as an Overseer, the deceased was promoted on two occasions in the year 1973 and in the year 1981. If the service record of the deceased is considered, there was a reasonable prospect of the deceased getting further promotion especially when his date of retirement was 1st March 2001. The evidence of the second witness examined by the

Appellants shows that even if the deceased would have continued on the same post of Sectional Engineer, at the time of his retirement, his basic pay would have been Rs.3435/-. Obviously he would have got substantial amount of Dearness Pay apart from the said basic pay.

7. My attention has been invited to a decision of the Apex Court in the case of General Manager, Kerala State Road Transport Corporation v/s. Susamma Thomas (AIR 1994 Supreme Court 1631). The Apex Court has dealt with the applicability of multiplier method for computing the compensation in the case of a fatal accident. The Apex Court observed that while calculating multiplicand, contingency in future will have to be evaluated. The Apex Court held that the prospects of future increase in income will have to be considered provided there is evidence to that effect. In the present case witness No.3 Shri Vijay Kashinath More has been examined who has brought on record that the deceased was in the employment from 19th May 1963 and till his death he received two promotions in regular course. The deceased had more or less a stable job. The deceased was to retire on 1st March 2001 and the last promotion he got was on 1st April 1981. According to the said witness, even if the deceased would have retired in the year 2001 without securing any further promotion, there would have been enhancement in his

basic salary by atleast Rs.700/- and correspondingly there would have been increase in dearness allowance. At the time of the accident, the deceased had already put in about 25 years of service. Therefore, it can safely be said that he had a stable job and he had reasonable prospects of securing further promotion. At the time of death the total emolument received by the deceased was Rs.3383/- and over and above that he was receiving travelling allowance of Rs.500/- per month. In the present case the reasonable prospect of future increase in the salary will have to be taken into consideration for calculating the multiplicand. For the purpose of calculating multiplicand, the monthly income of the deceased can be safely taken at Rs.4200/-. One-third amount will have to be deducted for personal expenses. The age of the deceased was about 46 years at the time of accident. The trial Court has taken the multiplier of 12 which is certainly on the higher side. In a recent Judgment, the Apex Court has taken the multiplier of 12 in case of a deceased whose age was 38 years. Therefore, a reasonable multiplier of 9 will have to be applied in this case. The multiplicand will be Rs.33,600/- (i.e. Rs.2800 x 12). Thus the total compensation payable will be Rs.3,02,400/- (Rs.33,600 x 9). In addition to that, an usual amount of Rs.15,000/- will have to be added on account of loss of consortium and loss of estate. Thus the total amount payable is

Rs.3,17,200/-.

8. A submission has been made as regards the compensation payable on account of damage to the car which was being driven by the deceased. Reliance is placed on the panchanama which records that the damage was to the extent of Rs.10,000/-. The panchanama is not drawn by any expert and therefore, no value can be attached to the estimate of loss recorded in the panchanama. There is no specific evidence on record to show that the damage to the car is to the extent of Rs.10,000/-. The Tribunal has awarded a sum of Rs.2000/- on the said account. The said amount will have to be maintained. Adding the said sum of Rs.2000/-, the lumpsum figure of compensation payable will be Rs.3,20,000/- which will be inclusive of the amount awarded under no-fault liability. The Tribunal has awarded interest at the rate of 12% per annum. Since the award is of the year 1993, the rate of interest awarded by the Tribunal is appropriate. The Appeal is pending in this Court for about 13 years. As per the recent Judgment of the Apex court the rate of interest which is to be awarded in such cases is 7.5%. Therefore, the interest on enhanced amount will be payable at the rate of 7.5% per annum.

9. Hence the following order is passed:

(i) The impugned judgment and award is modified. The operative part of the impugned Judgment and Award is substituted by the following:

"(a) The claim petition is partly allowed.

(b) Opponents Nos.1 to 3 are jointly and severally directed to pay a sum of Rs.3,20,000/- to the Applicants/ Claimants together with proportionate costs.

(c) It is clarified that the amount of Rs.3,20,000/- will be inclusive of the amount awarded on account of no-fault liability.

(d) The Opponent Nos.1 to 3 are jointly and severally directed to pay interest at the rate of 12% per annum on Rs.2,61,200/- to the Claimants from the date of filing of the claim petition till realisation of the claim amount.

(e) On the balance amount of Rs.58,800/- the Opponents Nos.1 to 3 shall be jointly and severally liable to pay interest at the rate of 7.5% per annum from the date of filing of the claim petition till realisation of the amount."

(ii) The Appellants will be entitled to proportionate costs of this Appeal from the third Respondent.

Judge.